

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 HAZEN BARE,

11 Plaintiff,

12 v.

13 MEGAN J. BRENNAN, POSTMASTER  
14 GENERAL OF THE UNITED STATES  
15 POSTAL SERVICE,

Defendant.

CASE NO. C20-0589-JCC

ORDER

16 Pursuant to the parties' stipulation (Dkt. No. 11), the parties stipulate to the following:

17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or  
19 private information for which special protection may be warranted. Accordingly, the parties  
20 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The  
21 parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not  
22 confer blanket protection on all disclosures or responses to discovery, the protection it affords  
23 from public disclosure and use extends only to the limited information or items that are entitled  
24 to confidential treatment under the applicable legal principles, and it does not presumptively  
25 entitle parties to file confidential information under seal.

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1       2. “CONFIDENTIAL” MATERIAL

2       “Confidential” material shall include the following documents and tangible things  
3 produced or otherwise exchanged:

4           • Employee personnel files;  
5           • Financial records, including payroll records and tax returns;  
6           • Medical records or medical information; and  
7           • Any records whose release without a protective order would violate the Privacy  
8           Act, 5 U.S.C. § 552a.

9       3. SCOPE

10       The protections conferred by this agreement cover not only confidential material (as  
11 defined above), but also (1) any information copied or extracted from confidential material; (2)  
12 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
13 conversations, or presentations by parties or their counsel that might reveal confidential material.

14       However, the protections conferred by this agreement do not cover information that is in  
15 the public domain or becomes part of the public domain through trial or otherwise.

16       4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17       4.1       Basic Principles. A receiving party may use confidential material that is disclosed  
18 or produced by another party or by a non-party in connection with this case only for prosecuting,  
19 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
20 the categories of persons and under the conditions described in this agreement. Confidential  
21 material must be stored and maintained by a receiving party at a location and in a secure manner  
22 that ensures that access is limited to the persons authorized under this agreement.

23       4.2       Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
24 ordered by the Court or permitted in writing by the designating party, a receiving party may  
25 disclose any confidential material only to:

26           (a)       the receiving party’s counsel of record in this action, as well as employees of

1 counsel to whom it is reasonably necessary to disclose the information for this litigation;

2 (b) the officers, directors, and employees (including in house counsel) of the  
3 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
4 agree that a particular document or material produced is for Attorney's Eyes Only and is so  
5 designated;

6 (c) experts and consultants to whom disclosure is reasonably necessary for this  
7 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (d) the Court, court personnel, and court reporters and their staff;

9 (e) copy or imaging services retained by counsel to assist in the duplication of  
10 confidential material, provided that counsel for the party retaining the copy or imaging service  
11 instructs the service not to disclose any confidential material to third parties and to immediately  
12 return all originals and copies of any confidential material;

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
14 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit  
15 A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
16 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
17 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
18 under this agreement;

19 (g) the author or recipient of a document containing the information or a custodian or  
20 other person who otherwise possessed or knew the information.

21 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
22 referencing such material in court filings, the filing party shall confer with the designating party,  
23 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
24 remove the confidential designation, whether the document can be redacted, or whether a motion  
25 to seal or stipulation and proposed order is warranted. During the meet and confer process, the  
26 designating party must identify the basis for sealing the specific confidential information at issue,

1 and the filing party shall include this basis in its motion to seal, along with any objection to  
2 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be  
3 followed and the standards that will be applied when a party seeks permission from the Court to  
4 file material under seal. A party who seeks to maintain the confidentiality of its information  
5 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the  
6 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,  
7 in accordance with the strong presumption of public access to the Court's files.

8       5. DESIGNATING PROTECTED MATERIAL

9       5.1    Exercise of Restraint and Care in Designating Material for Protection. Each party  
10 or non-party that designates information or items for protection under this agreement must take  
11 care to limit any such designation to specific material that qualifies under the appropriate  
12 standards. The designating party must designate for protection only those parts of material,  
13 documents, items, or oral or written communications that qualify, so that other portions of the  
14 material, documents, items, or communications for which protection is not warranted are not  
15 swept unjustifiably within the ambit of this agreement.

16       Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
17 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
18 unnecessarily encumber or delay the case development process or to impose unnecessary  
19 expenses and burdens on other parties) expose the designating party to sanctions.

20       If it comes to a designating party's attention that information or items that it designated  
21 for protection do not qualify for protection, the designating party must promptly notify all other  
22 parties that it is withdrawing the mistaken designation.

23       5.2    Manner and Timing of Designations. Except as otherwise provided in this  
24 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
25 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
26 be clearly so designated before or when the material is disclosed or produced.

(a) Information in documentary form (e.g., paper or electronic documents and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings): the designating party must affix the word “CONFIDENTIAL” to each page that contains confidential material. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
3 original designation is disclosed.

4       6.2    Meet and Confer. The parties must make every attempt to resolve any dispute  
5 regarding confidential designations without court involvement. Any motion regarding  
6 confidential designations or for a protective order must include a certification, in the motion or in  
7 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
8 conference with other affected parties in an effort to resolve the dispute without court action. The  
9 certification must list the date, manner, and participants to the conference. A good faith effort to  
10 confer requires a face-to-face meeting or a telephone conference.

11       6.3    Judicial Intervention. If the parties cannot resolve a challenge without court  
12 intervention, the designating party may file and serve a motion to retain confidentiality under  
13 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
14 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
15 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
16 other parties) may expose the challenging party to sanctions. All parties shall continue to  
17 maintain the material in question as confidential until the Court rules on the challenge.

18       7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
19           LITIGATION

20       If a party is served with a subpoena or a court order issued in other litigation that compels  
21 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
22 party must:

23           (a)    promptly notify the designating party in writing and include a copy of the  
24 subpoena or court order;

25           (b)    promptly notify in writing the party who caused the subpoena or order to issue in  
26 the other litigation that some or all of the material covered by the subpoena or order is subject to

1 this agreement. Such notification shall include a copy of this agreement; and

2 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
3 designating party whose confidential material may be affected.

4 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

5 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
6 material to any person or in any circumstance not authorized under this agreement, the receiving  
7 party must immediately (a) notify in writing the designating party of the unauthorized  
8 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
9 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
10 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
11 Agreement to Be Bound" that is attached hereto as Exhibit A.

12 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
13 MATERIAL**

14 When a producing party gives notice to receiving parties that certain inadvertently  
15 produced material is subject to a claim of privilege or other protection, the obligations of the  
16 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
17 provision is not intended to modify whatever procedure may be established in an e-discovery  
18 order or agreement that provides for production without prior privilege review. The parties  
19 agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth  
20 herein.

21 **10. NON TERMINATION AND RETURN OF DOCUMENTS**

22 Within 60 days after the termination of this action, including all appeals, each receiving  
23 party must return all confidential material to the producing party, including all copies, extracts  
24 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
25 destruction.,

26 Notwithstanding this provision, counsel are entitled to retain one archival copy of all

1 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,  
2 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
3 work product, even if such materials contain confidential material.

4 The confidentiality obligations imposed by this agreement shall remain in effect until a  
5 designating party agrees otherwise in writing or a court orders otherwise.

6 It is so ORDERED.

7 It is further ORDERED that pursuant to Federal Rule of Evidence 502(d), the production  
8 of any documents in this proceeding shall not, for the purposes of this proceeding or any other  
9 federal or state proceeding, constitute a waiver by the producing party of any privilege applicable  
10 to those documents, including the attorney-client privilege, attorney work-product protection, or  
11 any other privilege or protection recognized by law.

12 DATED this 11th day of June 2021.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE

EXHIBIT A

## ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was entered by the United States District Court for the Western District of Washington on \_\_\_\_\_ [date] in the case of *Blas v. McDonough*, Case No. 2:20-cv-01303-JCC-TLF. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity not in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_